IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12124 of 1994

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JIKAR KARIM UNANI

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

MR JJ YAJNIK for Petitioner

MR YOGESH S LAKHANI for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 10/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution of India though styled as one under Articles 226, 227, 14 and 16 of the Constitution.

2. Before proceeding further on the merits of the

matter it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. The petitioner herein was a conductor in the employment of the respondent Gujarat State Road Transport Corporation on the relevant day, and on duty as such. On the relevant day viz. 22nd May 1978, the bus was checked by checking party of the respondent Corporation at Bardhar at about 10.10 am when it was found that the workman had collected bus fare from four passengers of one group travelling from Rajkot to Bardhar and had not issued ticket to them. Similarly the workman had collected bus fare from three female passengers travelling from Rajkot to Halands and had not issued tickets to them. It was also found that he had allowed two adult passengers and two children passengers to travel without tickets from Tremba to Bardhar. The checking party thereupon got the appropriate tickets issued to the passengers from whom the workman had already collected the bus fares, got collected bus fares from the passengers who were travelling without tickets and got issued tickets to them, recorded statements of the passengers, recorded the statement of the workman and then reported the matter to the Depot Manager. Ultimately the petitioner conductor was issued a chargesheet on 15th June 1978, and a departmental inquiry was held against him. As a result of the inquiry it was found that the charges levelled against the workman were proved and a punishment of dismissal from service was imposed. The petitioner workman thereupon preferred a departmental appeal, and on failing therein, preferred the second departmental appeal which also failed. He thereupon raised an industrial dispute as a result of which a reference was made to the Labour Court, Rajkot being Reference (LCR) No.230/81.

4. The Labour Court, by its judgement and award dated 5th October 1982, was pleased to reject the reference on merits. It is this decision which is the

subject matter of the present petition.

5. It is pertinent to note that the workman has in his statement of claim at Exh.3 in the Labour Court contended that the inquiry held against him was not in consonance with the principles of natural justice, that he had not committed any acts of misconduct as described in the charge-sheet and the finding of guilt is perverse. However, looking to the tenor of the impugned judgement and award it appears that this contention raised in the statement of claim at Exh.3 was not pressed. Had it been pressed on merits by assertion of the relevant facts as to how the inquiry was vitiated by violation of the principles of natural justice, no doubt the employer Corporation would have led evidence to the contrary to rebut such factual contentions. The fact remains that apart from an averment made in the statement of claim in this regard, the workman has not led any evidence before the Labour Court to substantiate his claim. In the absence of such factual evidence, obviously the Labour Court could not have and in fact was not required to deal with this contention. In the premises aforesaid, similar contention raised and pressed in the present petition must fail. This must fail also for the reason that it is a well settled principle of law that a fresh contention cannot be raised in a petition under Article 227 of the Constitution of India.

6. It is pertinent to note that the Corporation in its written statement filed at Exh.7 has specifically contended that the averments made by the workman in the statement of claim are all false, that the workman was in fact caught red-handed in the act of committing misappropriation of Corporation funds, that the inquiry held against him was perfectly legal and in consonance with the principles of natural justice, that the conductor has professed the theory of "road booking" only as a last minute defence without substance, and that in fact the workman has admitted his guilt in his statement recorded on the spot of checking. For this reason it was contended that the reference deserves to be dismissed.

7. The only defence taken by the workman both in the inquiry as also before the Labour Court was that he had not issued tickets to the passengers though he had collected bus fares from them because there was a heavy rush in the bus. In this context it may be noted that so far as the factual aspect is concerned, the workman has admitted in his statement recorded on the spot i.e. at the time of checking, that he had in fact collected the fares from the concerned passengers, but had not issued

tickets to them. Thus, when he attempted to offer an explanation that there was a heavy rush in the bus and for this reason he could not issue tickets, this is merely an explanation for the factual admission that he had not issued tickets although he had collected the fares. The competent authority as also the appellate authority have rightly rejected this explanation. The Labour Court has also rejected this explanation and in my opinion it deserves only rejection, for the simple reason that when the bus was checked the workman was not found issuing tickets, but was found standing near the door. Obviously, therefore, the theory of road booking has been merely got up by him. The Labour Court has also rightly made an observation on the question of fact which was established from evidence on record that the majority of the passengers were destined for Bardhar where the bus was checked. If the bus had not been checked at that place and point of time, the workman would have kept the bus fares collected by him with himself. This is one of the most obvious cases of misappropriation one can come across.

8. Even on the aspect of quantum of punishment the Labour Court had good reasons to observe that his service record is unsatisfactory. In a previous act of misconduct he had been dismissed from service, but was given an opportunity to improve by being granted reinstatement. The present incident, therefore, belies the possibility of improvement on the part of the conductor. I need not reiterate a number of decisions of this Court and Supreme Court where it has been observed that deliberate, intentional and flagrant misappropriation on the part of this class of employees viz. conductors deserve no sympathy from the court, particularly where it is shown that earlier opportunities granted for self-improvement have not been availed of.

9. In the premises aforesaid I find that there is no substance in the present petition and the same is, therefore, dismissed. Rule is discharged with costs.

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